Supreme Court, U.S.
FILED

NO. 94 166 JUL 2 1 1994

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

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JOHN A. RAMIREZ,
Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION;
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION;
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 18;
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 13,

Respondents.

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# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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JOHN A. RAMIREZ
Petitioner in Pro Se

1000 Haverhill Street
West Sacramento, California 95691
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5 pp

## QUESTIONS PRESENTED

1) Whether the National Labor Relations Board proceedings provided Petitioner/longshoreman with a full and fair opportunity to litigate all issues and claims.

2) Whether the United States Northern California District Court should have given the Administrative Law Judge's findings as to the Respondents' refusal to transfer Petitioner from the Los Angeles Port to the Sacramento Port and refusal to dispatch him collateral estoppel effect to bar Petitioner's claim for Retaliatory discharge.

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## I. INTRODUCTION

John A. Ramirez, Petitioner in Pro se, prays that the Supreme Court of the United States grant a Writ of Certiorari to review the two judgments below. Related Petition filed on June 16, 1994.

## II. OPINION CITED BELOW.

The Memorandum and Order was issued and entered on October 14, 1992. Appendix A.

The judgement was entered on October 19, 1992. Appendix B.

## III. JURISDICTION

The Memorandum of the United States Court of Appeals for the Ninth Circuit was entered on January 21, 1994. The Court of Appeals then denied Petitioner's timely request for rehearing and rejected his suggestion for an rehearing en banc on April 22, 1994. Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

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IV. STATUTES

The original Complaint filed on April 28, 1992, in this district court set forth a hybrid action for breach of contract and breach of duty of fair representation against Respondents under Section 301 of the Labor Management Relations Act, 29 U.S.C section 185; a general federal question.

But in September, 1992, Petitioner attempted to bring to the attention of this district court that his complaint actually set forth a cause of action for wrongful termination in violation of public policy premised on California law. This district court failed to consider this claim. CR. 24 page 5.

V. STATEMENT OF THE CASE.

Petitioner's deregistration/firing was not litigated in the NLRB.

Without providing the Petitioner with an opportunity to gather or present his documentary evidence which showed that the NLRB proceedings

had been tainted by fraud, misrepresentation, and other misconduct, the district judge decided that all the issues and claims had been fully and fairly litigated in the NLRB and therefore dismissed the complaint.

A. THE NLRB PROCEEDINGS

NLRB Administrative Law Judge Jay R. Pollack's decision only dealt with two issues: whether the Respondents unlawfully refused to transfer Petitioner from Los Angeles to Sacramento and later refused to dispatch him in Sacramento. The ALJ's decision issued on October 16, 1991. Petitioner wasn't fired until November 9, 1991.

Excluded from this hearing was relevant evidence regarding the Respondents' illegal and criminal Sacramento Class B longshore registration which unlawfully excluded Petitioner, their schemes of doubling and tripling back and of padding the payroll, and their widespread practice of registering only their relatives and friends.

The NLRB's illegal settlement agreement with Respondents supposedly resolved these allegations by Petitioner. Petitioner's reporting of the Respondents' widespread illegal activities and the NLRB's misconduct to Congressmen, Senators, the Newspapers, and other government agencies was not subject matter covered by the ALJ.

Furthermore, the ALJ did not consider the fact that NLRB Region 20 attorney Jonathan J. Seagle and Petitioner's attorney Kevin S. Robinson failed to gather or present evidence on Petitioner's behalf during this hearing. In fact, they deliberately suppressed evidence which would have directly contradicted the Respondents' stated business reasons for denying his transfer and for placing him on the nondispatch list - "no work list."

B. The NLRB's unethical and illegal settlement to cover up Respondents' Racketeering activities in our West Coast Ports.

By late March, 1990, NLRB Region 20 officials had knowledge of the PMA-ILWU officials' illegal Class B registrations in the Ports of Los Angeles (1987), Oakland (1988), San Francisco (1989), and Sacramento (1989). In the Sacramento Port registration, the PMA-ILWU's own documents, which Region 20 had, revealed that PMA-ILWU officials working in concert had deliberately changed the 1989 Coastwise Rules of Registration without notifying affected employees in violation of the National Labor Relations Act as part of their plan to register their relatives and friends. Region 20 officials also knew that a padding of the payroll scheme was involved in that Sacramento Port registration. And that doubling and tripling back by union members was systemic in the longshore industry and was depriving the

public of it's right to employment opportunities.

On June 5, 1990, Region 20 attorney John M. Kelly subpoenaed payroll records and other documents from the PMA-ILWU dating back 20 years. Payroll records would expose the corrupt practices of padding the payroll and doubling - tripling back. And the other documents would have revealed how PMA-ILWU officials had applied their stated rules on a case by case basis in a discriminatory fashion and had changed rules arbitrarily to fit their needs at a particular time so that they could maintain absolute control over all longshoremen. A system built on nepotism and cronyism.

Region 20 attorney John Kelly and investigator Denise Scaffidi wanted to expose this pattern of corrupt activity and had already asked for assistance from the FBI and IRS.

The PMA-ILWU never turned over the subpoenaed documents. And subsequently, John Kelly was forced out of Region 20 and Denise

Scaffidi found a public investigator job in the ILWU's Vice President's brother's legislative district in the State of Washington.

Region 20 attorney John Kelly, before he left, advised Petitioner to retain a private attorney because things were bad and that Petitioner's political activity against Region 20 had become very troublesome to Region 20 officials and the PMA-ILWU. Petitioner subsequently hired attorney Kevin S. Robinson to represent him.

On August 28, 1990, attorney Kevin Robinson and Petitioner reviewed a handful of documents from the PMA-ILWU in Region 20's San Francisco office. Robinson took notes. Robinson proceeded to discover relevant evidence regarding transfers, visiting (working) privileges, leaves of absences, work opportunity, and how the PMA-ILWU officials applied their stated rules on a case by case basis in a discriminatory fashion. Robinson and Region 20 attorney Jonathan Seagle already knew

that the Respondents had unlawfully excluded Petitioner from the Sacramento Port's Class B longshore registration. This evidence contradicted the Respondents' Wright-line defense in the Petitioner's NLRB hearing. Robinson and Seagle suppressed this evidence.

On September 28, 1990, and after NLRB Region 20 officials and the Administrative Law Judge had been questioned by Congressman Vic Fazio, Congressman Robert Matsui, U.S. Senator Alan Cranston, the Newspapers, and other public agencies regarding the NLRB's failure to fully investigate the Respondents, the Administrative Law Judge stated that any formal settlement agreement with the PMA-ILWU would now exclude - "exempt" - Petitioner. Appeal case no. 93-15941, Excerpts of Record CR.7 Exhibit B pages 54-58 and Exhibit C NLRB Transcript page 88.

On December 7, 1990, Petitioner wrote to NLRB Chairman James M. Stephens regarding NLRB Region 20's deliberate misconduct and proposed settlement agreement.

Then NLRB General Counsel Jerry M. Hunter lied to Congressman Vic Fazio to cover-up Region 20's misconduct.

On January 15, 1991, NLRB Region 20 attorney Jonathan Seagle and PMA-ILWU attorneys Craig E. Epperson and Robert Remar agreed to adjust the Sacramento Port's existing 1988 rules regarding the Port's identified casual longshore list and to modify the existing 1989 Coastwise Rules of Registration to exclude Petitioner from the identified casual longshore list and from the future Class B registration list in the Port of Sacramento.

Petitioner qualified for the 1988 Sacramento Port's identified casual longshore list because he had worked the required longshore hours in the Port - 500 hours in the previous two years. Petitioner also met the other criteria of 450 longshore hours in the previous two years and over 5000 total longshore hours in the industry.

Petitioner, by 1988, had already worked

approximately 8000 longshore hours in the Port of Sacramento and had already 10 "good years" credited towards his fringe benefits. Appeal case no. 93-15941 Excerpts of Record CR.7 Exhibit B page 2.

NLRB Region 20's only stated reason for denying the Petitioner with an opportunity to be on this identified casual longshore list was that he was already registered. Region 20 also knew that the PMA-ILWU had changed their master Collective Bargaining Agreement in July, 1990, to require any longshoremen to be on this identified list before he or she could obtain Class B registration in any port. And that the main qualification would be total longshore hours/work experience in the longshore industry.

Furthermore, NLRB Region 20 proceeded to modify the existing 1989 Coastwise Rules of Registration to exclude Petitioner from the Class B longshore re-registration process under this settlement agreement in the Port of Sacramento. Under this settlement agreement,

the PMA-ILWU officials agreed to fire those sixteen 1989 Sacramento Class B longshoremen and re-register sixteen Class B longshoremen by these 1989 Coastwise Rules of Registration.

The 1989 Coastwise Rules of Registration, before Region 20's and the PMA-ILWU's 1991 modifications, gave the Petitioner preference for that Sacramento re-registration because he had applied in November, 1988, and because he had seniority as a registered longshoreman. The Coastwise Rules gave preference to any registered longshoreman who had applied for Class B registration in any port. All the Petitioner had to do was drop his registration status in the Port of Los Angeles and accept Class B registration in the Port of Sacramento. Appeal Case no. 93-15941, Excerpts of Record CR.7, Exhibit B pages 10-13.

As NLRB Region 20 attorney Jonathan Seagle stated for the record it was not the province of the agency to change the existing (1989) Coastwise Rules of Registration when the

Coastwise Rules were in effect at that time. Appeal case no. 93-15941 Excerpts of Record CR.7 Exhibit C NLRB Transcript page 574.

NLRB Region 20 therefore deliberately made these adjustments and modifications not for any legitimate reason, but made them to deprive Petitioner of his property/employment rights including his fringe benefits under this settlement agreement because of his protected conduct against the NLRB.

Therefore, this agency's actions would qualify as fraudulent. U.S. v. Utah Constr. Co. 384 U.S. 394, 399 (1965).

## VI. Reasons For Granting Petition

### A. Importance

From the prospective that this case concerns some individual's hardship or that the Court below errored is not by itself significant in the context of the United States Supreme Court. Thousands of these cases are brought before the Court every year.

But this case is much more than an individual's hardship. It represents a breakdown of systems whose goal was to insure that this type of illegal conduct did not occur in the first place.

Petitioner would not have spoken out if the Respondents had been operating in a fair and honest manner. The Respondents' corrupt practices have not only hurt past and present casual longshoremen by denying them employment and unlawfully retaining their fringe benefits but have also cost the tax payers and consumers - who ultimately pay for this corruption and greed - Millions of Dollars over the past 20 years. Our West Coast ports are public facilities.

What is further at stake here is the Constitutional and Statutory rights of everyone. And these rights act as a bulwark against this type of tyranny and corruption.

The PMA-ILWU officials have created a climate of fear and intimidation for all

longshoremen because of their absolute control over employment and Class B registration - employment provides a longshoreman with $200.00 for an eight-hour shift and Class B registration provides a longshoreman with a $60,000 or more a year job plus a lucrative package of fringe benefits - which therefore gives them tremendous power. And this power of employment has provided the means by which the Respondents have controlled union membership and squashed dissent over the past 20 years to maintain the status quo of corruption and greed in the longshore industry.

B. Error in Court Below

The district judge stated that Plaintiff's claim of wrongful discharge was not litigated by the Administrative Law Judge. The only issues before the A.L.J. were the denial of Petitioner's transfer and the refusal to dispatch him in Sacramento. Appendix A page 14.

"To foreclosure relitigation of an issue under collateral estopped: 1) the issue at

stake must be identical to the one alleged in the prior litigation; 2) the issue must have been actually litigated in the prior litigation; and 3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgement in the earlier action." Clark v. Bear Stearns & Co., Inc. 966 F. 2d 1318, 1320-21 (9th 1992).

Petitioner's State-law claim for wrongful termination in violation of public policy which included the charge that the NLRB had infringed upon his Constitutional rights was not a part of the ALJ's decision.

Furthermore, "one general limitation the Court has repeatedly recognized is that the concept of collateral estopped cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case." Allen v. McCurry 449 U.S. 90, 95 (1980).

This Court has also recognized that "State-

Labor standards - such as CA Labor code 1102.5 (a) and (b) and Gov't code 12940 (f) - affect union and nonunion employees equally, and neither encourage nor discourage the CBA processes that are the subject of the NLRA." And are "nonnegotiable rights outside the CBA and created by the State to protect health, limbs, and property of citizens." Metropolitian Life Ins. Co. v. Massachusetts 471 U.S. 724, 755 (1984).

And therefore "there exists a common law cause of action for discharge in retaliation for seeking to rectify violations." Blom v. Spark Plugs U.S.A., Inc. 3 Cal. App. 4th 382, 388-89; 4 Cal. Rptr. 2d 139 (Feb. 1992).

Therefore, for the above reasons, the district judge should not have granted collateral estoppel effect to the ALJ's findings to bar Petitioner's claim.

## VII. Conclusion

For the above reasons, the Court should grant the Petition.

Thank you.

Dated: July 21, 1994 Respectfully submitted,

John A. Ramirez
1000 Haverhill Street
W. Sacramento, CA 95691

# Appendix A

FILED
OCT 14 6:38 AM '92
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO DIST OF CA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| JOHN A. RAMIREZ,<br><br>Plaintiff,<br><br>-vs.-<br><br>PACIFIC MARITIME ASSOCIATION, et al.,<br><br>Defendants. | No. C-92-1579 MHP<br><br><br><br>**MEMORANDUM AND ORDER**<br><br><br><br>ENTERED IN CIVIL DOCKET OCT 14 1992 |

Plaintiff John A. Ramirez ("Ramirez") commenced this action against defendants International Longshoremen and Warehousemen's Union ("union") and Pacific Maritime Association ("PMA") on April 28, 1992 alleging that plaintiff was deregistered (i.e., discharged) as a Class B longshoreman in retaliation for filing contract grievances and National Labor Relations Board ("NLRB") charges. Complaint, page 7.

Ramirez alleged that defendants breached the collective bargaining agreement ("agreement") and violated sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relation Act ("NLRA"), as amended by 28 U.S.C. § 158, in discharging him. Ramirez also alleged that the union violated its duty of fair representation in failing to defend Ramirez in the unlawful disciplinary actions taken by PMA. Ramirez also alleged that defendants discriminated against him in denying his application for transfer from Los Angeles/Long Beach Port ("LA Port") to Sacramento Port and in placing him on non-dispatch lists (i.e., no work lists). Complaint, pages 8-30.

On September 4, 1992, defendants filed a motion for application of collateral estoppel and summary judgment. Ramirez opposed the motion for summary judgment, asserting that he was entitled to the pending discovery.

Having considered the submissions and arguments of the parties, and for the following

reasons, the court GRANTS defendant's motion for application of collateral estoppel and summary judgment on plaintiff's claims.

BACKGROUND

I. Background Facts

Plaintiff was employed by PMA as a casual longshoreman in the Port of Sacramento from June 1975 through August 1987. Plaintiff was, thereafter, registered as a Class B longshoreman in the LA Port in August 1987 and was continuously in defendant's employ in such classification until November 1991, when plaintiff was discharged by PMA.

Defendant PMA is an organization composed of employers in California, Oregon, and Washington engaged in the business of the transportation of goods and passengers between Ports. Defendants International Longshoremen and Warehousemen's Union, Local 13 and 18, are labor organizations and collective bargaining representatives of the bargaining unit

consisting of PMA's employees at the LA Port.

Ramirez filed several charges against the defendants with the NLRB in 1989. Administrative Law Judge Pollack of the NLRB ("ALJ") held hearings on plaintiff's charges between May 1990 and February 1991. Ramirez was represented by John Kelly, the Region 20 staff attorney. Plaintiff alleges that Kelly suddenly resigned on July 9, 1990. On August 1, 1990, plaintiff hired a private attorney, Kevin Robinson. Plaintiff was represented by Robinson until March 11, 1991 when Robinson discontinued the representation because he had taken a job as a public defender. Ramirez claims that Kevin Robinson had assured him that he had filed a post-hearing brief on Ramirez' behalf when in fact he never submitted such a brief and that, therefore, he was denied effective assistance of counsel.

On October 16, 1991, the ALJ issued its decision which dismissed plaintiff's charges of employment discrimination. Thereafter, on

November 9, 1991, defendants sent Ramirez notification of his discharge along with arbitrator John Pandora's October 30th decision. The notice of discharge recited as the reason for the discharge that plaintiff had been unavailable for work at the LA Port. Complaint, Ex. C. Plaintiff alleges that the true reason for the discharge was that defendants were hostile towards plaintiff because he had filed grievance charges.

On January 10, 1992 both parties filed separate appeals of the ALJ's decision. While Ramirez' appeal before the NLRB was pending, he filed this action. On July 28, 1992, the NLRB affirmed the decision of the ALJ.

II. Administrative Decision

The issues addressed by the ALJ were: (A) whether certain officials of the union made unlawful threats to Ramirez, (B) whether the union unlawfully refused to transfer Ramirez from LA to Sacramento, and (C) whether the refusal to dispatch him in Los Angeles and

Sacramento was unlawful. Second Declaration of Robert Remar ("Remar Dec"), Ex. 2 at 3.

A. Unlawful Statements

At the administrative hearing, Ramirez alleged that the union violated section 8(b)(1)(A) of the NLRB when Richard Lomali, secretary-treasurer of local 13, told Ramirez that he must apologize to union officials for going to the NLRB. Id. at 14. The ALJ found that the uncontradicted evidence showed that Lomali had told Ramirez to write a letter of apology to the Coastwide Labor Relations Committee. Id. The ALJ also found that this conversation occurred when Ramirez was trying to gain support for his transfer. Id. The ALJ held that the reasonable inference drawn from Lomali's remarks is that the filing of the charges had adversely affected the possibility of Ramirez' transfer. Id. at 14-15. The ALJ stated "[a]ccordingly, I find that by these statements Respondent Local 13 violated section 8(b)(1)(A)." Id. at 15 (citing Petersburg

Associates, 239 N.L.R.B. 1091, 1097 (1978)).

The ALJ also found that Robert Olvera violated the NLRA by telling employee Tyrone Neal that Ramirez "blew it" by filing charges against Olvera and that Olvera was going to help Ramirez get a transfer until Ramirez filed charges against him. Id. The ALJ held that "such statements tend to threaten employees that the filing of unfair labor practices would result in retaliatory action. Accordingly, . . . Respondent International violated the Act by Olvera's statements." Id. The ALJ issued a cease and desist order. Id. at 19.

B. Request for Transfer

In order to prove a violation of NLRB section 8(a)(1) or 8(a)(3), plaintiff must first make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in an employer's action. Ramar Dec., Ex. 2 at 15-16 (citing Wright Line, A Division of Wright Line, Inc., 251 N.L.R.B. 1083 (1980), enforced 662 F.2d 899 (1st Cir.

1981), cert. denied, 455 U.S. 989 (1982)). Upon such a showing, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. Id. at 16.

The ALJ found that Ramirez had made a prima facie showing that defendants denied his transfer partly because he had filed grievance charges. Id. The ALJ found that the defendants, however, had met their burden of establishing that Ramirez would have been denied a transfer for legitimate business considerations even had he not filed grievance charges. Id. at 17. The ALJ stated that even if the union was partially motivated by unlawful considerations, Ramirez would have been denied a transfer because the defendants had lawful business reasons for refusing to permit such a transfer. Id. The ALJ agreed with the defendants that Ramirez had not met the requirements for a transfer under the agreement. Id. Therefore, the ALJ found that the

defendants did not violate the NLRA in refusing to permit Ramirez to transfer to Sacramento. Id.

C. Removal from Dispatch List

1. Removal from Dispatch List in Los Angeles

Ramirez had also alleged at the administrative hearing that he was placed on the non-dispatch list because he had filed grievance charges. Id. at 18. Ramirez alleged that he did not return to work at the LA Port because Richard Lomali had told him that he was cleared from the LA Port so as to allow him to work in Sacramento. Id. The ALJ found that Richard Lomali had told Ramirez that he was cleared from the LA Port. Id. The ALJ, however, held that Lomali had exceeded his authority and that Ramirez' unavailability would have resulted in his being placed on the non-dispatch list even in the absence of the grievance charges. Id. The ALJ, therefore, found that the defendants did not violate the NLRA in applying the

nondiscriminatory work rules to Ramirez. Id.

2. Removal from Dispatch List in Sacramento

The ALJ also found that local 18 did not violate the NLRA in removing Ramirez from the dispatch list in Sacramento. Id. The ALJ concluded that local 18 did not violate the NLRA because it was applying the non-discriminatory work rules to Ramirez. Id. The ALJ stated that Local 18 was bound by the agreement to enforce the discipline imposed upon Ramirez by the Los Angeles Port Labor Relations Committee. Id.

LEGAL STANDARDS

I. Summary Judgment

Under Federal Rule of Civil Procedure 56, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). See also T.W. Elec. Serv. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (the nonmoving party may not rely on the pleadings but must present specific facts creating a genuine issue of material fact); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (a dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.").

The court's function, however, is not to make credibility determinations. Id. at 249. The inferences to be drawn from the facts must be viewed in a light most favorable to the party opposing the motion. T.W. Elec. Serv., 809 F.2d at 631.

II. Collateral Estoppel

Under the doctrine of collateral estoppel, "an actual and necessary determination of an issue by a court of competent jurisdiction is conclusive in subsequent cases based on a

different cause of action but involving a party to the prior litigation." Johnson v. Mateer, 625 F.2d 240, 243 n.5 (9th Cir. 1980). Findings on issues decided in NLRB proceedings are entitled to collateral estoppel effect under certain circumstances. Paramount Transport Systems v. Chauffeurs, Teamsters and Helpers, Local 150, 436 F.2d 1064, 1066 (9th Cir. 1971); Rainbow Tours, Inc. v. Hawaii Joint Council of Teamsters, 704 F.2d 1443, 1445-46 (9th Cir. 1983). An administrative decision is given collateral estoppel effect if the findings on material issues were supported by substantial evidence on the administrative record as a whole and if the proceedings fully complied with the standards of procedural and substantive due process. Paramount Transport, 436 F.2d at 1066.

DISCUSSION

Defendants seek summary judgment on the grounds that the doctrine of collateral estoppel bars plaintiff's claims. Plaintiff opposes the

motion on the grounds that he was unable to perform discovery at the administrative hearing and has not been able to complete discovery in this action. For the reasons stated below, the court finds that defendants are entitled to application of collateral estoppel and summary judgment on Ramirez' claims.

I. Collateral Estoppel and Summary Judgment

Defendants seek summary judgment on plaintiff's claims on the grounds that considering the NLRB conclusions, if given collateral estoppel effect, plaintiff cannot prove his claims. To give collateral estoppel effect, defendants must show that: (A) the findings were made on material issues, (B) the findings were supported by substantial evidence on the administrative record as a whole, and (C) the proceeding fully complied with due process. Rainbow Tours, 704 F.2d at 1446.

A. Findings on Material Issues

In order for the findings of an administrative board to have collateral estoppel

effect, the issues involved must be material issues necessary to the determinations of the Board. Paramount Transport, 436 F.2d at 1065-66. Plaintiff's allegations of wrongful refusal to transfer and placement on the non-dispatch list were material issues litigated by the ALJ and are therefore barred by collateral estoppel. Remar Dec., Ex. 2 at 3.

Plaintiff's claims of discharge without just cause were not explicitly litigated by the ALJ. However, the underlying issues alleged by the plaintiff and the defendants were adjudicated. Plaintiff's only basis for the unlawful deregisteration claims is that the defendants had acted in a retaliatory manner. Defendants contend that Ramirez was discharged because of his unavailability at the LA Port. Both the issues of whether defendants' actions were retaliatory and whether plaintiff had been unavailable at the LA Port had been adjudicated by the ALJ. The ALJ had found that defendants' adverse actions towards Ramirez were not

discriminatory or retaliatory but were a result of his unavailability. Accordingly, the court finds that plaintiff's claims present issues which were material issues necessarily litigated by the ALJ.

B. Findings Supported by Substantial Evidence

Defendants allege that the findings of the ALJ are supported by substantial evidence on the record as a whole. Paramount Transport, 436 F.2d at 1065. The court agrees. The agreement provided the basis for the grant of transfer requests and Ramirez had not met the requirements. Accordingly, the court rules that the ALJ's findings of lawful denial of transfer is supported by substantial evidence.

This court also finds that the ALJ's conclusion that Ramirez was placed on the non-dispatch list for legitimate business reasons is supported by the administrative record. The agreement provided that employees who are unavailable for 70% of the scheduled time are

subject to non-dispatch and deregisteration. The record supports the ALJ's conclusion that Ramirez was unavailable at the LA Port after February 1991. Accordingly, the court finds that the ALJ's conclusions were supported by substantial evidence on the record.

C. Due Process of Law

Defendants allege that the administrative hearing complied with due process requirements because Ramirez had a full opportunity to appear and was represented by counsel. Plaintiff opposes the application of collateral estoppel on the grounds that he did not have a full and fair opportunity to gather and present all the relevant facts at the NLRB proceedings, and consequently, the Board's decision was incomplete, one-sided, and improper.

Plaintiff specifically contests the protective order issued by the ALJ prohibiting discovery without the consent of defendant's attorney or the approval of the ALJ. Plaintiff states that as a result he was able to inspect

only a handful of documents which were predetermined by the defendant's attorney to be relevant. Plaintiff, however, does not state which documents he was unable to inspect and how those documents were relevant. Additionally, because plaintiff had the opportunity to appeal to the ALJ as to any particular document he sought and chose not to do so,, this court finds that the limitations placed upon discovery by the ALJ did not deny Ramirez due process.

Plaintiff's complaint alleges that he was not represented by counsel during a portion of the administrative proceedings. However, plaintiff has not provided any further evidence raising a genuine issue of material fact that he was denied due process.

Accordingly, this court finds that collateral estoppel bars plaintiff's claims. Because this court grants collateral estoppel, there are no genuine issues of material facts and therefore summary judgment on these claims is proper. Fed. R. Civ. P. 56.

II. Motion to Compel Discovery

Ramirez also moves this court to compel discovery. Ramirez had made a document request under Federal Rule of Civil Procedure 34 on June 11, 1992. Because this court grants defendants' motion for collateral estoppel and summary judgment, plaintiff's motion to compel discovery must also be denied. Garret v. City & County of San Francisco, 818 F.2d 1515, 1519 (9th Cir. 1987).

//

CONCLUSION

Accordingly, the court GRANTS defendants' motion for application of collateral estoppel and summary judgment on plaintiff's claims. The court also DENIES plaintiff's motion to compel discovery.

IT IS SO ORDERED.

Dated: October 14, 1992

MARILYN HALL PATEL
United States District Judge

# Appendix B

FILED
OCT 19, 1992
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| JOHN A. RAMIREZ,<br><br>Plaintiff,<br><br>-vs.-<br><br>PACIFIC MARITIME ASSOCIATION, et al.,<br><br>Defendants. | NO. C-92-1579 MHP<br><br>**JUDGEMENT**<br><br>Fed. R. Civ. P. 58 |

This action having come before this court, the Honorable Marilyn Hall Patel, United States District Judge presiding, and the issues having been duly presented and an order having been duly filed,

IT IS ORDERED AND ADJUDGED that defendant's motion for application of collateral estoppel and summary judgement is GRANTED, and the action is DISMISSED in its entirety.

IT IS SO ORDERED.

Dated: October 19, 1992

MARILYN HALL PATEL
United States District Judge

# Appendix C

FILED
JAN 21 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| JOHN A RAMIREZ, | |
| | No. 92-16848 |
| Plaintiff-Appellant | |
| | D.C. No. CV-92-01579-MHP |
| v. | |
| PACIFIC MARITIME ASSOCIATION et al., | MEMORANDUM* |
| Defendants-Appellees. | |

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Appeal from the United States District Court for the Northern District of California Marilyn H. Patel, District Judge, Presiding

Submitted January 18, 1994**

Before: REINHARDT, O'SCANNLAIN and KLEINFELD, Circuit Judges.

John A. Ramirez appeals pro se form the district court's grant of summary judgement in favor of Pacific Maritime Association and the International Longshoremen's and Warehousemen's

Union Locals 13 and 18 in his action brought under section 301 of the Labor Management Relations Act, 29 U.S.C. 185, for breach of a collective bargaining agreement and breach of the duty of fair representation. The district court found that a prior adverse decision by the National Labor Relations Board collaterally

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. p. 34 (a); 9th Cir. R. 34-4. Accordingly, Ramirez' request for oral argument is denied.

estopped Ramirez from relitigating the retaliatory discharge issues underlying his claims and granted summary judgment on that basis. We have jurisdiction under 28 U.S.C. 1291 and affirm for the reason stated in the district court order.

**AFFIRMED**

FILED
APR 22 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| JOHN A. RAMIREZ<br><br>Plaintiff-Appellant,<br><br>v.<br><br>PACIFIC MARITIME ASSOCIATION et al.,<br><br>Defendants-Appellees. | No. 92-16848<br><br>D.C. No. CV-92-01579-MHP<br>Northern California<br>(San Francisco) |

Before: REINHARDT, O'SCANNLAIN and KLEINFELD, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is

rejected.